

SA2003 RF0064

December 5, 2003

Ms. Tricia Knight
Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

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DEC 08 2003

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Request for Title and Summary for Proposed Initiative

Dear Ms. Knight:

Pursuant to Article II, Section 10(d) of the California Constitution, we are submitting the attached proposed statewide Constitutional Amendment ballot measure "The Family Communication Act" to your office and request that you prepare a title and summary of the measure as provided by law. We have also included with this letter the required signed statements under California Elections Code section 9608, and payment in the amount of \$200.

Thank you for your time and attention to this important matter. Should you have any questions or require additional information, please contact Mr. Paul E. Laubacher at 2555 Rio de Oro Way, Sacramento, CA 95826, Phone (916) 381-5222.

We are both registered to vote at the address above.

Very Truly Yours,

Paul E. Laubacher, R.N.

Barbara R. Laubacher, R.N.

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AFFIDAVIT

I, Paul E. Laubacher, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Paul E. Laubacher

Dated this 5th day of December, 2003

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AFFIDAVIT

I, Barbara R. Laubacher, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Barbara R. Laubacher

Dated this 5 day of December, 2003

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INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO VOTERS

The Attorney General of California has prepared the following title and summary of the chief purposes and points of the proposed measure:

(Insert 500 word title and summary)

To the Honorable Secretary of State of California:

We the undersigned, registered, qualified voters of California, residents of the afore-described County (or City and County), on the signature page of this petition section, hereby propose an amendment to the Constitution of the State of California relating to parental notification prior to the performance of an abortion on a pregnant minor, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to the general election or otherwise provided by law. The proposed amendments read as follows:

SECTION 1. Title

This amendment shall be known and may be cited as the Family Communication Act.

SECTION 2. Declarations of Findings and Purposes

(a) The People of California have a special and compelling interest in, and responsibility for, protecting the health and well-being of children, ensuring that parents are timely informed of potential health-related risks to their children, and promoting the parent-child relationship.

(b) The People find that there exists a compelling and important State interest in protecting minors, in fostering the family structure and preserving it as the primary social unit, and in protecting the rights of parents and children. A minor faced with medical, psychological and emotional decisions related to the termination of pregnancy, is better able to make fully informed decisions with serious and lasting consequences after open communications with her parents.

Such communication protects against the undue influence of adult men who seek to avoid discovery of their sexual exploitation of minors, ensures adult guidance and support by those responsible for the minors' well-being, as well as careful monitoring for post-abortion complications. Currently, a pregnant minor, as young as 13 or 14, can obtain an abortion without any notification to her parents.

(c) The United States Supreme Court has upheld the constitutionality of parental notification of a minor's intent to obtain an abortion.

SECTION 3. Parental Notification

Section 32 of Article 1 of the California Constitution is added to read:

SEC. 32 (a) Notwithstanding Article 1, Section 1, or any other provision of this Constitution, except in a medical emergency, or when a waiver of notification has been obtained pursuant to this Section and statutes and regulations, no abortion shall be performed upon a pregnant unemancipated minor until at least forty-eight (48) hours after the physician has first provided notice to one of her parents or to her legal guardian pursuant to this Section and statutes and regulations. Except for the rights, duties, privileges, conditions, and limitations specifically provided for in this Section, nothing in this Section shall be construed to grant, secure, or deny any right relating to abortion or the funding thereof.

(b) For purposes of this Section, the following terms shall be defined to mean:

(1) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device or means with the intent to terminate the clinically diagnosable pregnancy of a woman known to be pregnant, with knowledge that the termination of the pregnancy by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription or means is not an abortion if done with the intent to:

- (A) save the life or preserve the health of the unborn child,
- (B) remove a dead unborn child caused by spontaneous abortion; or
- (C) remove an ectopic pregnancy.

(2) "Medical emergency" means a condition which, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant unemancipated minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(3) "Notice" means a written notification, signed by a physician or his or her agent and addressed to a parent, informing the parent that the unemancipated minor is pregnant and that she has requested an abortion.

(4) "Parent" means either parent if both parents have legal custody, or the parent or person having legal custody, or the legal guardian of a minor.

(5) "Unemancipated minor" means a female under the age of 18 years who is unmarried and is not currently serving active duty in one of the military services of the United States of America and who has not been declared emancipated pursuant to state law, or a female for whom a guardian has been appointed because of a finding of incompetency. For the purposes of this Section, pregnancy does not emancipate a female under the age of 18 years.

(c) Notwithstanding any other provision of law to the contrary and except as provided in subsection (f), an abortion shall not be performed upon a pregnant unemancipated minor until at least forty-eight (48) hours has elapsed after written notice has been delivered pursuant to subsection (d), or at least forty-eight (48) hours after written notice can be presumed to have been delivered pursuant to subsection (e), or until the physician has received a copy of a waiver of notification from the court as provided in subsection (h) of this Section, or until twenty-four (24) hours after a waiver of notification has been received from a parent of the minor. The physician or his or her agent shall inform the unemancipated minor that her parent or guardian may receive notice as provided for in this Section.

(d) The notice shall be delivered to the parent personally by the physician or his or her agent.

(e) In lieu of the personal delivery required in subsection (d) of this Section, notice may be made by certified mail addressed to the parent at the parent's last known address with return receipt requested and restricted delivery to the addressee, which means a postal employee may only deliver the mail to the authorized addressee. Notice can only be presumed to have been delivered under the provisions of this subsection at noon of the second day after the written notice sent by certified mail was postmarked, not counting any days on which regular mail delivery does not take place.

(f) Notice shall not be required under this Section if the attending physician certifies in the unemancipated minor's medical records that the abortion is

necessary due to a medical emergency as defined in subsection (b)(2) of this Section

(g) Notice shall not be required under this Section if waived pursuant to this subsection. If the pregnant minor elects not to permit notification of one or both of her parents or legal guardian, she may file a petition with the juvenile court. If, pursuant to this subsection, a minor seeks to file a petition, the court shall assist the minor or person designated by the minor in preparing the petition and notices required pursuant to this Section. The petition shall set forth with specificity the minor's reasons for the request. The court shall ensure that the minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing a petition. An unemancipated pregnant minor shall appear personally in the proceedings in juvenile court, and may appear on her own behalf or with counsel of her own choosing. The court shall, however, advise her that she has a right to court-appointed counsel upon request. The court shall appoint a guardian ad litem for her. The hearing shall be held by 5 p.m. on the second court day after filing the petition unless extended at the written request of the minor, her guardian ad litem, or her counsel. A notice shall be given to the minor of the date, time and place of the hearing on the petition. Judgment shall be entered within one court day of submission of the matter. The judge shall order a record of the evidence to be maintained, including the judge's written factual findings and legal conclusions supporting the decision.

(h) (1) If the judge finds, by clear and convincing evidence, that the unemancipated minor is sufficiently mature and well-informed to decide whether to have an abortion, the judge shall authorize a waiver of notification.

(2) If the judge finds, by clear and convincing evidence, that there is a pattern of physical, sexual, or emotional abuse of the minor by the parent or legal guardian, the judge shall authorize a waiver of notification.

(3) If the judge finds, by clear and convincing evidence, that the minor is not sufficiently mature and well-informed to decide whether to have an abortion, and notification of the parent is not in the best interests of the minor, the judge shall authorize a waiver of notification.

(4) If the judge fails to rule within the statutory time period and no extension was requested and granted, the petition shall be deemed granted and the notice requirement shall be waived.

(5) The judge shall ensure that notice of a determination that there is a pattern of physical, sexual, or emotional abuse of the minor under subsection (h)(2) is made to the appropriate county child protective agency.

(i) If the judge does not make a finding specified in subsection (h) of this Section, the judge shall dismiss the petition or motion.

(j) The minor may appeal the judgment of the juvenile court by filing a written notice of appeal at any time after the entry of judgment. The Judicial Council shall prescribe, by rule, the practice and procedure on appeal and the time and manner in which any record on appeal shall be prepared and filed and may prescribe forms for such proceedings. These procedures shall require that the notice of the date, time and place of hearing, which shall be held within three court days of filing the notice of appeal, shall be mailed to the parties by the clerk of the court. The appellate court shall ensure that the minor's identity be kept confidential and that all court proceedings be sealed. No filing fee shall be required for filing a notice of appeal. Judgment on appeal shall be entered within one court day of submission of the matter.

(k) Any person who performs an abortion on an unemancipated minor and in so doing knowingly or negligently fails to comply with the provisions of this Section shall be liable for damages and reasonable attorney's fees in a civil action brought by a parent or guardian wrongfully denied notification. A person shall not be liable under this act if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the unemancipated minor regarding information necessary to comply with this section were bona fide and true. At any time prior to the rendering of a final judgment in an action brought under this subsection, the parent or guardian may elect to recover, in lieu of actual damages, an award of statutory damages in the amount of \$10,000. In addition to any damages awarded under this subsection, the parent or guardian shall be entitled to an award of reasonable attorney fees. Nothing in this Section shall be construed to limit the common law rights of parents.

(l) The Judicial Council shall prescribe, by rule, the practice and procedure for such petitions, hearings and entry of judgment as it deems necessary and may prescribe forms for such proceedings, and each court shall provide annually to the Judicial Council, in a manner to be prescribed by the Judicial Council to ensure confidentiality of the minors filing petitions, a report, by judge, of the number of petitions filed, the number of petitions granted, the number of petitions denied, and

the number of petitions that were deemed granted as the result of the judge's failure to rule within the time period specified by this subsection, said reports to be publicly available unless the Judicial Council determines that the data contained in individual reports should be aggregated by court or by county before being made available to the public in order to preserve the confidentiality of the minors filing petitions.

(m) The Department of Health Services shall prescribe forms for the reporting of abortions performed on unemancipated minors by physicians. The report forms shall not identify the individual patient by name and shall include the identity of the physician who performed the abortion, the facility where the abortion was performed, the county and state in which the minor resides, the minor's age, the number of prior pregnancies, prior abortions, gestational age of the unborn child; the type of abortion procedure; the date of the procedure; the numbers of abortions performed after notices made under subsections (d) and (e); the numbers of emergency abortions performed under subsection (f); and the numbers performed after waivers of notification under each of subsections (h)(1), (h)(2), (h)(3), and (h)(4).and after parental waivers of notification. This information shall be compiled into an annual report. The annual report shall not include the identity of the physicians who performed the abortions or the facilities where the abortions were performed. The compilation shall include the county and state in which the minor resides, the minor's age, the number of prior pregnancies, prior abortions, gestational age of the unborn child; the type of abortion procedure; the date of the procedure; the numbers of abortions performed after notices made under subsections (d) and (e); the numbers of emergency abortions performed under subsection (f); and the numbers performed after waivers of notification under each of subsections (h)(1), (h)(2), (h)(3), and (h)(4) and after parental waivers of notification. The annual report shall be made available to the public.

(n) The physician who performs an abortion on an unemancipated minor after notifying a parent or guardian according to subsection (d) or (e), or due to certification as a medical emergency pursuant to subsection (f), or after having received a waiver of notification from the court according to subsection (h)(1), (h)(2), (h)(3) or (h)(4) shall within one month file a report of performing an abortion on an unemancipated minor with the Department of Health Services on forms prescribed by the Department. No patient names are to be written or entered on the forms.

(o) A parent, guardian, or any other person shall not coerce a minor to have an abortion performed. If a minor is denied financial support by the minor's parents,

guardian, or custodian due to the minor's refusal to have an abortion performed, the minor shall be deemed emancipated for the purposes of eligibility for public-assistance benefits.

(p) If any one or more provision, subsection, sentence, clause, phrase or word of this Section or the application thereof to any person or circumstance is found to be unconstitutional or invalid, the same is hereby declared to be severable and the balance of this Section shall remain effective notwithstanding such unconstitutionality or invalidity. Each provision, subsection, sentence, clause, phrase or word thereof, would have been approved by voters irrespective of the fact that any one or more provision, subsection, sentence, clause, phrase, or word might be declared unconstitutional or invalid.